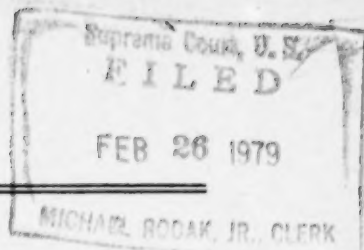


APPENDIX

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IN THE

Supreme Court of the United States

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October Term, 1978

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No. 78-753

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GREAT AMERICAN FEDERAL SAVINGS & LOAN  
ASSOCIATION, JOHN A. VIROSTEK, JOSEPH E.  
BUGEL, JOHN J. DRAVECKY, DANIEL T. KUBA-  
SAK, EDWARD J. LESKO, JAMES E. ORRIS,  
JOSEPH A. PROKOPOVITSH, JOHN G. MICENKO,  
and FRANK J. VANEK,

*Petitioners,*

*v.*

JOHN R. NOVOTNY,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT.

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PETITION FOR CERTIORARI FILED NOVEMBER 6, 1978  
CERTIORARI GRANTED JANUARY 8, 1979

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i

**NOTE**

The opinion and order of the Court of Appeals for the Third Circuit is attached to the Petition for a Writ of Certiorari as Appendix A (Pet. App. A at 1a-66a). The opinion and order of the United States District Court for the Western District of Pennsylvania is attached to the Petition for a Writ of Certiorari as Appendix B (Pet. App. B at 67a-76a). They will not be reprinted in the Appendix.

1

**APPENDIX A**

**Complaint**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

\_\_\_\_\_  
JOHN R. NOVOTNY,

*Plaintiff,*

vs.

GREAT AMERICAN FEDERAL SAVINGS & LOAN  
ASSOCIATION, JOHN A. VIROSTEK, JOSEPH E.  
BUGEL, JOHN J. DRAVECKY, DANIEL T. KUBASAK,  
EDWARD J. LESKO, JAMES E. ORRIS, JOSEPH A. PRO-  
KOPOVITSH, JOHN G. MICENKO and FRANK J.  
VANEK,

*Defendants.*

\_\_\_\_\_  
No. ....  
JURY TRIAL DEMANDED

**I. JURISDICTION:**

1. The jurisdiction of this Court is founded upon Title 28 U.S.C. § 1343, relating to actions for deprivation of civil rights, and Title 42 U.S.C. § 2000e(5), relating to discrimination in employment.

**II. PARTIES:**

2. John R. Novotny, plaintiff, hereinafter called "Novotny," is an individual resident of Allegheny County, Pennsylvania.

## Appendix A—Complaint.

3. Defendant, Great American Federal Savings and Loan, hereinafter called "GAF," known previously as First Federal Savings & Loan, is a mutual Federal Savings & Loan Association, organized and existing under Federal law and charter, for the purpose of promoting thrift and home ownership.

4. Defendant, John A. Virostek, is an individual who is presently Director Emeritus of GAF, and at times relevant hereto he was chairman of the Board of Directors of GAF and its Senior Solicitor.

5. Defendant, Joseph E. Bugel, is an individual who is presently Chairman of the Board of GAF, and at times relevant hereto was Vice-Chairman of the Board of GAF.

6. Defendant John J. Dravecky, is an individual who is and was at all times relevant hereto Vice-President of GAF.

7. Defendant, Daniel T. Kubasak, is an individual who is and was at all times relevant hereto President of GAF.

8. Defendant, Edward J. Lesko, is an individual who is a member of the GAF Board of Directors and at times relevant hereto was the junior solicitor of GAF.

9. Defendant, James E. Orris, is an individual who is a member of the Board of Directors of GAF, and was at times relevant hereto President of GAF.

10. Defendant, Joseph A. Prokopovitch, is an individual who is presently and at all times relevant hereto, was a member of the Board of Directors of GAF.

11. Defendant, John G. Micenko, is an individual who is presently Executive Vice-President of GAF, and at times relevant hereto, was treasurer and secretary of GAF.

## Appendix A—Complaint.

12. Defendant, Frank J. Vanek, is an individual who is presently Vice-President and Controller of GAF, and at times relevant hereto was Controller of GAF.

## III. FACTS:

13. Novotny was hired by GAF on or about May 1, 1950, as a clerk, and subsequently became a loan officer, treasurer, secretary and member of the Board of Directors.

14. Novotny was terminated from his employment with GAF on January 22, 1975, and at the time of his termination of his employment, he was an undesignated employee, having not been re-elected secretary of the association at its annual meeting on January 22, 1975.

15. At the time of his termination, Novotny was earning \$3,825.00 per month as an employee of GAF, and was an employee in good standing who would not have been terminated but for the matters set out below. In addition, Novotny earned \$250.00 for each of twenty-six (26) meetings of the Board of Directors which he attended per year.

16. Beginning at times in the past, the exact dates of which are unknown to Novotny, but which began or continued after January 1, 1966, individual defendants, on behalf of GAF, intentionally and deliberately embarked upon and pursued a course of conduct the effect of which was to deny to female employees equal employment opportunity and, specifically, equal opportunity for promotion and advancement.

17. Said course of conduct was characterized by some or all of the following actions, *inter alia*:

(a) Promoting male employees with less experience, fewer years of service and less qualification over more qualified female employees;

*Appendix A—Complaint.*

(b) Providing education and training to male employees which was not provided to female employees;

(c) Making known to male employees job vacancies which were not made known to female employees;

(d) Evaluating male employees in accordance with different and subjective criteria than those applied to female employees;

(e) Categorizing certain jobs as "male" or "female" and promoting in accordance with these categories;

(f) Creating an atmosphere inimical to the aspirations of female employees by subjecting all female employees to the supervision and control;

(g) By providing different and lesser degrees of fringe benefits to female employees than to male employees;

(h) By demoting qualified female employees and replacing them with less qualified male employees;

18. Said course of conduct constitutes an ongoing discrimination and continues to the present time.

19. During July, 1974, said course of conduct manifested itself in the demotion of a female employee, Betty Batis from a position of head teller to the position of savings counselor, and her replacement by a less qualified male employee.

20. As a result of said demotion, Betty Batis and several female employees of GAF made known to Defendant Kubasak their displeasure at the demotion and as well as the general employment practices of GAF which had indicated the existence of sex-based employment discrimination.

*Appendix A—Complaint.*

21. As a result of said protestations, Betty Batis was terminated from her employment, although she was subsequently rehired in a lower position after being required to submit a letter of apology to the individual defendants.

22. During a meeting of the Board of Directors, however, Novotny expressed his general support for the female employees who had made their protest and expressed various opinions with regard to the obligations of GAF in terms of employment discrimination and equal employment opportunity, and further indicated his refusal to support the majority decision on the Board of Directors with regard to the termination of Batis.

23. On or about January 22, 1975, at the annual meeting of the Association, Novotny was not re-elected as the secretary or member of the Board of Directors and further was terminated from his employment with GAF.

24. Said termination bore no relationship to the ability with which Novotny carried on his employment duties with GAF, but was solely the result of Novotny's support of the equal employment opportunity claims of the female employees of GAF and as well as the result of Novotny's expressed opinions in support of Batis and the other female employees, which opinions were made by Novotny in accordance with his rights under the Constitutions of the United States and the Commonwealth of Pennsylvania.

25. In addition, Novotny was terminated because of his known support for equal employment opportunity for women within the GAF organization.

26. In addition, the termination of Novotny resulted from an agreement and conspiracy by and among the individual



*Appendix A—Complaint.*

defendants to deprive Novotny of and to penalize him for the exercise of his constitutional rights to freedom of expression and association, particularly as said expression and associations involved the furtherance of equal opportunity employment for women.

27. In addition, Novotny was terminated because he was, in his position as an employee and secretary of the association and a member of the Board of Directors, in a position to affect actions and procedures to implement equal employment opportunities for women and to provide to female employees training, education and responsibilities equal to that of male employees.

**IV. CAUSES OF ACTION:**

28. The termination of Novotny was accomplished by the individual defendants in violation of Title 42, U.S.C. § 1985 relating to conspiracies to deprive individuals of their rights under the Constitution of the United States.

29. Further, the termination of Novotny was accomplished in violation of Title 42, U.S.C. § 2000e(5), relating to equal employment opportunities, pursuant to a pattern of practice of the individual defendants, on behalf of GAF, to discriminate against female employees in hiring, promotion and advancement.

30. As a result of the conspiracy by the individual defendants and the unlawful discriminatory patterns, Novotny was deprived of his income from January 22, 1975, and will be deprived of said income in the future.

31. As a further result of the conspiratorial and discriminatory actions of the individual defendants as aforesaid, Novotny suffered humiliation and embarrassment and his ability to obtain employment in the future as been severely curtailed and hampered.

*Appendix A—Complaint.*

32. As a further result of the conspiratorial and discriminatory actions of the individual defendants as aforesaid, Novotny has been required to engage in services of attorneys to gain redress for the damages done to him.

33. At all times relevant hereto, the individual defendants were and are acting on behalf of GAF.

**V. EXHAUSTION OF ADMINISTRATIVE REMEDIES:**

On or about January 29, 1975, Novotny filed a charge of discrimination with the Equal Employment Opportunity Commission and on the 9th day of December, 1976, he received from the Commission his right to file suit in accordance with the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(5). Novotny has in all other respects complied with all applicable provisions of the law with regard to the exhaustion of his administrative remedies prior to the filing of suit.

WHEREFORE, Plaintiff requests this Honorable Court to:

(a) Enter judgment in favor of plaintiff and against the defendants, individually, jointly and severally, for an amount equal to the monetary damages suffered as a result of his unlawful termination;

(b) Enter judgment in favor of plaintiff and against the defendants, individually, jointly and severally for attorneys' fees and costs of suit;

(c) Enjoin defendants, individually and jointly from further acts of discrimination, and order the defendants to comply with applicable provisions of the law dealing with equal employment opportunity.

Respectfully submitted,

By STANLEY M. STEIN,  
Stanley M. Stein, Esquire.

**APPENDIX B****Answer On Behalf Of Defendant Great  
American Federal Savings & Loan Association**

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

JOHN R. NOVOTNY,

*Plaintiff,*

v.

GREAT AMERICAN FEDERAL SAVINGS & LOAN  
ASSOCIATION, JOHN A. VIROSTEK, JOSEPH E.  
BUGEL, JOHN J. DRAVECKY, DANIEL T. KUBASAK,  
EDWARD J. LESKO, JAMES E. ORRIS, JOSEPH A.  
PROKOPOVITSH, JOHN G. MICENKO and FRANK J.  
VANEK,

*Defendants.*

Civil Action No. 76-1580

In response to the instant Complaint, Defendant Great American Federal Savings & Loan Association (the "Association") respectfully answers as follows:

*First Defense*

The Complaint fails to state a claim against the Association upon which relief can be granted.

*Appendix B—Answer On Behalf Of Defendant Great  
American Federal Savings & Loan Association.**Second Defense*

1. The allegations of Paragraph 1 of the Complaint are conclusions of law to which no response is required.

2-13. The Association admits the allegations in Paragraphs 2 through 13 of the Complaint.

14. The Association admits that the Plaintiff was terminated from his employment with the Association and was not re-elected secretary of the Association on January 22, 1975. The Association denies that the Plaintiff was an un-designated employee at that time.

15. The Association admits that the Plaintiff was earning \$3,825.00 per month at the time of his termination, and that the Plaintiff received \$250.00 for each of the twenty-six meetings of the Board of Directors which he attended per year. All other allegations in Paragraph 15 are denied.

16-22. The Association denies the allegations in Paragraphs 16 through 22 of the Complaint.

23. The Association admits that Plaintiff was not re-elected as the secretary of the Association and was terminated from his employment on January 22, 1975. The Association denies that Plaintiff's position on the Board of Directors was terminated at that time.

24-32. The Association denies the allegations in Paragraphs 24 through 32 of the Complaint.

33. The Association is without knowledge or information sufficient to form a belief as to the truth of Plaintiff's allegations under the caption "Exhaustion of Administrative Remedies."

*Appendix B—Answer On Behalf Of Defendant Great  
American Federal Savings & Loan Association.*

*Third Defense*

The Association has not intentionally engaged in any unlawful employment practice as alleged in the Complaint nor has it permitted any unlawful employment practice to occur.

*Fourth Defense*

The Association's employment practices and policies are non-discriminatory and are applied and administered in a non-discriminatory manner.

*Fifth Defense*

If the Association has instituted different terms, conditions, or privileges of employment, such differences are, or were, not the result of an intention to discriminate because of sex, but rather are, or were, instituted by the Association pursuant to a *bona fide* merit system, or a system which determines the terms, conditions or privileges of employment by quality of performance, experience, expertise, or other factors other than sex.

*Sixth Defense*

Rights of action alleged in the Complaint against the Association are barred because Plaintiff, as an officer and member of the Board of Directors, was *in pari dilecto* concerning actions taken by the Association toward female employees.

*Appendix B—Answer On Behalf Of Defendant Great  
American Federal Savings & Loan Association.*

WHEREFORE, the Association requests that judgment be entered in its favor and against the Plaintiff, that the Complaint be dismissed, and that the Association be awarded costs of this action and reasonable attorneys' fees as authorized by 42 U.S.C. § 2000e-5(k).

Respectfully submitted,

EUGENE K. CONNORS,  
Eugene K. Connors,

WALTER G. BLEIL,  
Walter G. Bleil,

REED SMITH SHAW & McCLAY,  
747 Union Trust Building,  
Pittsburgh, Pennsylvania 15230,

*Counsel for Defendant, Great  
American Federal Savings &  
Loan Association.*

---

[Certificate of service omitted in printing]



## APPENDIX C

**Defendant Great American Federal  
Savings & Loan Association's Motion To Dismiss**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN R. NOVOTNY,

*Plaintiff,*

v.

GREAT AMERICAN FEDERAL SAVINGS & LOAN  
ASSOCIATION, JOHN A. VIROSTEK, JOSEPH E.  
BUGEL, JOHN J. DRAVECKY, DANIEL T. KUBASAK,  
EDWARD J. LESKO, JAMES E. ORRIS, JOSEPH A.  
PROKOPOVITSH, JOHN G. MICENKO and FRANK J.  
VANEK,

*Defendants.*

Civil Action No. 76-1580

Pursuant to Federal Rule of Civil Procedure 12(b)(6),  
Defendant Great American Federal Savings & Loan  
Association (the "Association") respectfully moves this Court  
to take the following action:

*Appendix C—Defendant Great American Federal Savings  
& Loan Association's Motion to Dismiss.*

1. To dismiss Plaintiff's allegation of a violation of 42 U.S.C. § 1985 for failure to state a cause of action in that:

a) No "conspiracy" existed because the decision to discharge the Plaintiff was admittedly made by the individual defendants in their capacity as officers and directors of the Association, and therefore reflected the judgment of a single business entity;

b) The allegations of the Complaint do not demonstrate the presence of an "invidiously discriminatory animus" directed toward a class to which the Plaintiff belongs; and

c) The rights of freedom of speech and association allegedly infringed by the conspiracy are not protected from the activities of individual persons;

2. To dismiss the allegation of jurisdiction under 28 U.S.C. § 1343 because Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e-5 *et seq.* ("Title VII"), has an independent jurisdictional basis;

3. To dismiss the alleged violations by the individual persons named as defendants to this suit because those individuals were not named as respondents to the proceedings before the Equal Employment Opportunity Commission;

4. To dismiss the demand for a jury trial because a Title VII action is equitable in nature; and

*Appendix C—Defendant Great American Federal Savings  
& Loan Association's Motion to Dismiss.*

5. To dismiss the allegations of violations of Title VII because the Plaintiff does not have standing to complain of discrimination against females.

Respectfully submitted,

EUGENE K. CONNORS,  
Eugene K. Connors,

WALTER G. BLEIL,  
Walter G. Bleil,

REED SMITH SHAW & McCLAY,  
747 Union Trust Building,  
Pittsburgh, Pennsylvania 15230,

*Counsel for Defendant, Great  
American Federal Savings &  
Loan Association.*

*Appendix C—Defendant Great American Federal Savings  
& Loan Association's Motion to Dismiss.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN R. NOVOTNY,

*Plaintiff,*

v.

GREAT AMERICAN FEDERAL SAVINGS & LOAN  
ASSOCIATION, JOHN A. VIROSTEK, JOSEPH E.  
BUGEL, JOHN J. DRAVECKY, DANIEL T. KUBASAK,  
EDWARD J. LESKO, JAMES E. ORRIS, JOSEPH A.  
PROKOPOVITSH, JOHN G. MICENKO and FRANI' J.  
VANEK,

*Defendants.*

Civil Action No. 76-1580

ORDER

AND NOW, this .... day of ....., 1977, upon consideration of the facts of record and arguments of counsel, it is hereby ordered, adjudged and decreed that judgment be entered in favor of defendant Great American Federal Savings & Loan Association against plaintiff John R. Novotny and that the Complaint be dismissed.

By the Court

[Certificate of service omitted in printing]